

## **BOARD OF APPEALS MINUTES**

**August 12, 2003**

**On Tuesday August 12, 2003 at 7 p.m. the Town of Clarence Zoning Board of Appeals heard the following requests for variances:**

**APPEAL NO I**                      **Requests the Board of Appeals approve and grant a six foot**  
**Jim & Laura Ferguson**        **(6') variance creating a four foot (4') side lot line for the**  
**Residential A/Commercial**   **construction of a new garage addition to 4671 Overlook Dr.**

**APPEAL NO I is in variance to Article II, section 30-12 D, size of yards.**

**APPEAL NO II**                      **Requests the Board of Appeals approve and grant a fifty foot**  
**Mark MacVittie**                **(50") variance creating a one hundred fifty foot (150') front**  
**Agricultural**                      **yard setback line for construction of a new home at 9640**  
   **Martin Road.**

**APPEAL NO II is in variance to Article V, section 30-27 B, size of yards.**

**APPEAL NO III**                      **Requests the Board of Appeals approve and grant a two foot**  
**John Semanski**                **(2') variance to allow the garage floor of a 2500 sq. ft. building**  
**Major Arterial**                **to be one foot (1') below the base flood elevation.**

**APPEAL NO III is in variance Flood Plain L.L. 107-5D (1-a).**

**APPEAL NO IV**                      **Requests the Board of Appeals approve and grant a variance**  
**Dominic Piestrak**                **to the Town of Clarence Grading Code top of wall**  
**Residential A**                      **requirements to allow walk out and daylight basements in**  
   **Hidden Pond Phase II, Part II.**

**APPEAL NO IV is in variance to Article XI, section 30-57 C - ordinance enclosed.**

**APPEAL NO V**                      **Requests the Board of Appeals approve and grant a five foot**  
**John Rubino**                      **(5') variance creating a forty foot (40') front lot line setback for**  
**Residential A**                      **construction of new house at 6140 Ranch View Drive.**

**APPEAL NO V is in variance to Article II, section 30-12 A, size of yards.**

**APPEAL NO VI**  
**Gordon & Nancy Crafts**  
**Agricultural**                      **Requests the Board of Appeals approve and grant a twenty foot (20') variance creating a five foot (5') rear lot line for the construction of a shed at 5285 Goodrich Road.**

**APPEAL NO VI is in variance to Article V, section 30-27 C, size of yards.**

**APPEAL NO VII**  
**Chet Koszelak**  
**Residential A**                      **Requests the Board of Appeals approve and grant a ten inch (10'') height variance creating a sixteen foot ten inch (16'10'') height for garage at 5380 Thompson Road. (Already built)**

**APPEAL NO VII is in variance to Article II, section 30-12 C, accessory buildings.**

**APPEAL NO VIII**  
**Theodore Hallac**  
**Residential A**                      **Requests the Board of Appeals approve and grant a four foot (4') height variance creating a thirty nine foot (39') height for construction of a new home at 6236 Willow Run Ct (Meadowlakes Subdivision off Millcreek Drive)**

**APPEAL NO VIII is in variance to Article II, section 30-11, size of buildings.**

**APPEAL NO IX**  
**Colleen Paluh**  
**Agricultural**                      **Requests the Board of Appeals approve and grant a nineteen foot (19') variance creating a twenty six foot (26') front lot line for the construction of a new garage at 9800 Keller Road.**

**APPEAL NO IX is in variance to Article V, section 30-27 B, size of yards.**

**APPEAL NO X**  
**Howard Feller**  
**Agricultural**                      **Requests the Board of Appeals approve and grant a fifty foot (50') variance creating a one hundred fifty foot (150') front lot line setback for construction of a new house at 9710 Martin Rd. (Vacant lot east of 9690 Martin Rd)**

**APPEAL X is in variance to Article V, section 30-27 B, size of yards.**

**ATTENDING:**                      John P. Brady  
   John Gatti  
   Raymond Skaine  
   Arthur Henning  
   Ronald Newton  
   Eric Heuser

**INTERESTED PERSONS:**

Maria Feller	Ken & Kathy Fetter	Laura Ferguson	Mark MacVittie
Henry Becker	John Semanski	Susan Greene	Regina Eyre
	Janice Talluto	Robert Talluto	Joseph Rubino
	Gordon Craft	Nancy Craft	Chester Koszelak
	Ted Hallac	Richard Battaglia	Colleen Paluh

MINUTES:

Motion by Raymond Skaine, seconded by John Gatti to approve the minutes of the meeting held on July 8, 2003 as written.

ALL VOTING AYE. MOTION CARRIED.

OLD BUSINESS

Motion by Raymond Skaine, seconded by Ronald Newton to re-open the setback Appeal for 9070 Sesh Road in light of new circumstances brought to the attention of the Zoning Board of Appeals and to set up a time for a site meeting of all Zoning Board of Appeals members at 9070 Sesh Road as soon as possible after the Kozlowski's have been notified.

ALL VOTING AYE. MOTION CARRIED.

The board decided to meet at the Kozlowski property on Monday August 18, 2003 at 8:00 a.m.

APPEAL NO I  
Jim & Laura Ferguson  
Residential A/Commercial

Requests the Board of Appeals approve and grant a six foot (6') variance creating a four foot (4') side lot line for the construction of a new garage addition to 4671 Overlook Drive.

DISCUSSION:

Mrs. Ferguson said they live on an irregular shaped lot with the garage to the north side of the lot. It is a one car garage and they own two cars, and in the future there will be more cars as the children grow older. They would like to add an attached two car garage which will infringe on the side yard setback leaving a four foot side lot. They would like to convert the present garage into living space into a computer room and an office for her husband. They also would like to add on to the bathroom and make it a full bath instead of a half bath. Adjacent neighbors are not opposed to their request. Members of the board did not have any objections.

ACTION:

Motion by Raymond Skaine, seconded by Arthur Henning to approve Appeal No I as written. It will be an improvement to the house and the neighborhood.

ALL VOTING AYE. MOTION CARRIED.

APPEAL NO II  
Mark MacVittie  
Agricultural

Requests the Board of Appeals approve and grant a fifty foot (50') variance creating a one hundred fifty foot (150') front yard setback line for construction of a new home at 9640 Martin Road.

DISCUSSION:

Mr. MacVittie said it is a new build, and he would like to be away from the road for protection of his small children. There is a small ranch that is close to the road, and on the east side of his lot there is a thirty acre parcel. The garage and most of the activity of the family will be on that side. The lot is 1400 feet deep, and they would like to have a nice front yard. Ron Newton asked Mr. MacVittie why he wanted to take his neighbors backyard privacy away. Mr. MacVittie said he wasn't trying to take his privacy away. He has talked to the neighbors and they are not uncomfortable with 150 feet. He is planning on planting pine trees to screen the neighbors yard. He would not have applied for a variance if his neighbor would have objected.

Ron Newton asked Jim Callahan why there were variance requests for the north side of Martin Road. Isn't there an established set back line they have to live up to? Ray Skaine said he disagrees with Mr. Newton. He did not think this home will impact the character of the neighborhood. If the neighbors had a problem, they would be here tonight. Mr. Gatti disagreed with Mr. Skaine. "First of all, I think as a member of this Board, it is your job, and it is my job to look out for the benefit of anybody who lives in this Town. Just because a person does not show up at this meeting, doesn't mean that they are not interested. That is why you are here - to look out for their interests. Numerous times in the past, we have talked about people in the backyards of other people. With a fourteen hundred foot lot, the children should play in the backyard if there is too much traffic there, that is what people did for hundreds of years. I just don't see it. I have to agree with Mr. Newton, you have to look out for the people who are there. I just can't go along with this." Mr. Skaine said "I would say that would be the case if these people had not been notified, and they obviously have no objection because they signed, and they talked to the petitioner that they don't have a problem."

Eric Heuser said he is split on both sides. I understand what Ray is saying as far as the neighbors have been notified, they are aware that this meeting is taking place. As far as taking away privacy, he suggested the applicant move his house forward to help preserve that for the future, the board is here to make the decisions for the future, and the future of the neighborhood to make sure they are all in line. After much discussion among the members Arthur Henning asked the applicant if he would be willing to move forward. Mr. MacVittie said he would be willing to move forward. I am all the way over to the east, what I have done is to have my side load garage facing the other direction, and I know I have to be 25 feet off for the driveway and then I gave myself another 15 feet for an apron, and that is where I am going to start building my house. It is a small ranch similar to the other ranches that are built there. I would be flexible to move 10 or 15 feet forward or even a little bit more. Or instead of starting my house where the garage usually comes out on a ranch a side load garage a little bit further I would start the actual line of the house at 150 feet and bring the garage even further up. As long as it is aesthetically pleasing to the neighbors, I will work with them. I would like to sit back at 150 feet if I can.

ACTION:

Motion by Raymond Skaine, seconded by Arthur Henning to approve Appeal No II modified if Mr. MacVittie would work to bring it within twenty feet more with a variance of thirty feet for a lot setback of 130 feet giving him a 30 foot variance for the property at 9626 Martin Road.

Arthur Henning	AYE
Raymond Skaine	AYE
Ronald Newton	NAY
John Gatti	NAY
John Brady	NAY

Motion by Ronald Newton, seconded by John Gatti to ask the applicant to consider a one hundred ten foot (110') front setback line, because he would not be building in the neighbors backyard.

On the Question?

Ray Skaine asked the applicant if he was in favor of this. Mr. MacVittie said "One hundred and ten feet." Mr. Newton said "That is measured from the property line."

Mr. Skaine said “I think we should explain to the applicant that there is an appeal process with the State Supreme Court with an Article 78. The reason I would like to know from each of the people said no, based on the five proofs for denying an area variance.” John Gatti said he thought it changed the character of the area. Most of those houses are in line. That is one. How many do you need?” Mr. Skaine said “Five.” Mr. Newton said “It is substantial, he is exceeding the line, it is not a hardship for him to pull the house back in line with the rest of them. We are not dealing with a high ground effect, it is just a matter of the applicant’s request for aesthetics. Mr. MacVittie said he currently lives on the other side of Martin Road, he just sold his home, and they are going to be moving to an apartment. One of the reasons he sold is the proximity to the Industrial zone, that is another reason why he wanted to move back to get away from the noise and the lights from that zone. That is one of the reasons he wanted to sit back further. Eric asked how 110 feet would line up with the other house. Ron Newton said the ranch next door is about 26 feet wide. The front of Mr. MacVittie’s house would be 16 feet back of the existing house, so he really is not infringing on their backyard privacy. There won’t be a sawtooth effect. Arthur Henning asked Mr. MacVittie if he agrees to this? Mr. MacVittie said “I guess I would have to go back out and look at where 110 feet puts me with the construction zone and see where my front windows are going to be. There are some lights that shine on that lot. Councilwoman Guida said “Do you understand that your only recourse if you don’t take it is to go to the Supreme Court?” Mr. MacVittie said I thought I was being reasonable, coming forward to 130 feet, there is nothing on the other side of me. But if that is all that is being offered to me, I would take it, it is better than nothing. I am not going to go to the Supreme Court in Rochester. Ron Newton said “If those lights are a problem, that can be addressed by the Town Board.”

Arthur Henning	AYE	
Raymond Skaine	NAY	
Ron Newton	AYE	
John Gatti	AYE	
John Brady	AYE	MOTION CARRIED.

APPEAL NO  
John Semanski  
Major Arterial

Requests the Board of Appeals approve and grant a two foot (2') variance to allow the garage floor of a 2500 square foot building to be one foot (1') below the base flood elevation at 8365 Transit Road.

DISCUSSION:

Mr. Semanski said he is looking to add on to his existing garage, and combine the two buildings at the same floor height. Arthur Henning said after reading the memo from the Town Engineer he did not see a problem. Ron Newton agreed that as long as he meets the requirements of the Flood Plain Administrator he doesn't have a problem. Ray Skaine said if the applicant is willing to accept the four conditions of the Town Engineer, so the Town will not be held liable in the future, and it is included in the motion, he doesn't think we have a problem. John Gatti agreed .

ACTION:

Motion by Raymond Skaine, seconded by Arthur Henning to approve Appeal No III with the conditions stated on the letter from August 4, 2003 written by Tim Lavocat of the Engineering Department.

1. Property owner submit a letter of understanding to the Engineering Department accepting the increased flood risk associated with constructing the garage floor elevation two feet lower than the requirements set forth in Local Law 03-2000.
2. A floodplain development permit is required prior to any construction.
3. All other proposed construction and/or filling operations on the subject property must be in conformance with all requirements set forth in Local Law 03-2000 Flood Damage Prevention and will be reviewed for compliance by the Engineering Department prior to issuance of a building permit.
4. Property owner submit a certified as-built elevation survey of the structure showing the finished floor elevation. This will be required prior to issuance of Certificate of Compliance.

ALL VOTING AYE. MOTION CARRIED.

APPEAL NO IV  
Dominic Piestrak  
Residential A

Requests the Board of Appeals approve and grant a variance to the Town of Clarence Grading Code top of wall requirements to allow walk out and daylight basements in Hidden Pond Phase II, Part II.

DISCUSSION:

Susan Piestrak Greene and Gina Eyre represented the project for Mr. Piestrak. John Gatti asked the applicants if they had read the memo from the Town Engineer. Mr. Gatti requested they take the time right now and read it. Ron Newton said if they agree to the conditions set by Joseph Latona, he does not have a problem with it. The applicants read the memo and said the conditions were normal, and they agreed to the conditions.

ACTION:

Motion by Ronald Newton, seconded by Raymond Skaine to approve Appeal No IV as written with the conditions set forth by the Town Engineer Joseph Latona:

1. All proposed homes to be constructed with daylight basements (lots 32 through 37 and lot 47) must be constructed with daylight basement window wells to achieve a minimum of 1% grade (if required) from the proposed rear yard grade at the structure to the proposed rear yard drains. The daylight basement window wells (if required by grade) are to include drains to prevent the accumulation of water within the wells.

2. All building permit applications for all lots within Hidden Ponds Subdivision Phase 2 Part 2 must be accompanied by a detailed lot grading and drainage plan stamped and signed by a Professional Engineer licensed in the State of New York. Individual drainage and grading plans must be of sufficient detail and be acceptable to the Engineering Department before the Building Department will issue a building permit. The individual grading and drainage plans must show side yard swale grades, top of wall elevations (existing or proposed) of proposed structure and the immediately adjacent structures, rear yard drain rim and invert elevations and individual grading and drainage plans must show all existing and proposed grades at NGVD '29 datum (FEMA datum).

ALL VOTING AYE. MOTION CARRIED.



APPEAL NO V  
Joseph Rubino  
Residential A

Requests the Board of Appeals approve and grant a five foot (5') variance creating a forty foot (40') front lot line set back for the construction of a new home at 6140 Ranch View Drive.

DISCUSSION:

Mr. Rubino stated they would like to do a side load garage on this particular lot. This is the last lot in the subdivision where they are going to propose this foundation. John Gatti said he didn't see a real problem with this request, it doesn't look like it will be out of line to any great degree. Raymond Skaine, Ron Newton, and Arthur Henning did not see it as being a problem.

ACTION:

Motion by Raymond Skaine, seconded by John Gatti to approve Appeal No V as written.

ALL VOTING AYE. MOTION CARRIED.

APPEAL NO VI  
Gordon & Nancy Crafts  
Agricultural

Requests the Board of Appeals approve and grant a twenty foot (20') variance creating a five foot (5') rear lot line for the construction of a shed at 5285 Goodrich Road.

DISCUSSION:

In order to put the shed up against the rear lot line, I need to be able to move the shed back far enough, so I am not interfering with my sand filter for the septic tank. If he had to go back 25 feet, it would be very close to the house. We want the shed to be part of our garden and plan. It will be an L shape with a potting shed on one end, and a shed to keep the tractor and tools in. Ron Newton asked why they didn't choose the other side of the property for placing the shed. Mr. Crafts said he didn't want to interfere with the orchard. They are not trying to hide the shed. No one on the board had a problem with the request.

ACTION:

Motion by Ronald Newton, seconded by Arthur Henning to approve Appeal No VI as written.

ALL VOTING AYE. MOTION CARRIED.

APPEAL NO VII  
Chet Koszelak  
Residential A

Requests the Board of Appeals approve and grant a ten inch (10") height variance creating a sixteen foot ten inch (16'10") height for garage at 5380 Thompson Road.

DISCUSSION:

They planned to have a sixteen foot height, they tried to match the roof line of the house without going to a steeper pitch. He didn't know what happened, it was a construction error. The garage is already built. Ron Newton said he didn't think anyone would pick up on the ten inches. It was an honest mistake.

ACTION:

Motion by Raymond Skaine, seconded by Ron Newton to approve Appeal No VII as written.

ALL VOTING AYE. MOTION CARRIED.

APPEAL NO VIII  
Theodore Hallac  
Residential A

Requests the Board of Appeals approve and grant a four foot (4') height variance creating a thirty nine foot (39') height for construction of a new home at 6236 Willow Run Court.

DISCUSSION:

Mr. Hallac and Richard Battaglia the architect were in attendance. Mr. Battaglia said the house is a very deep house. This house is located on two lots. The house is 42 feet deep, in order to maintain the elevation of the basement floor one foot above the flood plain. There is a nine foot basement and nine foot first and second floors. The pitch of the roof just climbs up because of the 42 feet in depth. The house is a little under 4000 square feet, there is nothing unusual about it. John Gatti said it was not marked. Raymond Skaine said it is similar to what the board has seen up at Spaulding Lake. Some people want nine foot ceilings and it raises the roof line. Ron Newton said this isn't Spaulding Lake, it is Meadowlakes, there haven't been any homes in Meadowlakes that have come in for a height variance, so are we creating an additional problem in the Town, now will everyone start wanting a height variance? Raymond Skaine said this is the last phase in Meadowlakes. Ted has two lots that are quite deep and they go into the lake, most of the lots are not as deep as his. Ray Skaine said it is not like Mr. Hallac bought one lot and tried to squeeze it in, he bought two lots. No one else had any comments.

ACTION:

Motion by John Gatti, seconded by Arthur Henning to approve Appeal No VIII as written.

ALL VOTING AYE. MOTION CARRIED.

APPEAL NO IX  
Colleen Paluh  
Agricultural

Requests the Board of Appeals approve and grant a nineteen foot (19') variance creating a twenty six foot (26') front lot line setback for the construction of a new garage at 9800 Keller Road.

DISCUSSION:

The original owner of the home split the two car garage, put a wall down the middle, and turned it into a family room with a very small bathroom on one half, and a small garage on the other half. You can't even fit a Neon in there, it is only good for storage. It is not livable because we can't put furniture in the family room, or a car in the garage. They would like to stay on the existing footer of the two car garage that is there, and just bring the garage out a little bit to the front. Mr. Gatti said he thinks there are a lot of hardships for the family, it will help the family.

Ray Skaine asked what they are going to do with the existing garage. They will take the wall out, and make it into a family room. They will move the back wall in the bathroom to make it more comfortable, and possibly make a first floor laundry room. Ron Newton said according to the survey you gave us you have 32 feet to the west property line. Could you not add the garage next to the existing garage? It would fit in with the neighborhood rather than pulling it forward close to the street. We could give you a variance for the side lot line if necessary. Mr. Paluh said that side of the lot drops considerably, and would require a lot of fill. Mr. Newton said it is going to stick out like a sore thumb, with the garage out in front.

ACTION:

Motion by Raymond Skaine, seconded by Arthur Henning to approve Appeal No IX as written.

Ray Skaine	AYE
Ron Newton	NAY
Arthur Henning	AYE
John Gatti	AYE
John Brady	AYE

MOTION CARRIED,

APPEAL NO X  
Howard Feller  
Agricultural

Requests the Board of Appeals approve and grant a fifty foot (50') variance creating a one hundred fifty foot (150') front lot line setback for construction of a new house at 9710 Martin Road.

DISCUSSION:

Mrs Feller said they would like to be as far off the road as possible. They have a young son, and they would also like to have some privacy. If they only built at one hundred they will be looking at the neighbors barn. Arthur Henning asked if the neighbors next door had signed the notification form. Yes, they have. Ron Newton said there is a line of houses on the north side of Martin Road that have established a line, with the exception of a few older houses that pre-date the zoning laws. Why do you want to take away your neighbors privacy? Mrs. Feller said there is a line of trees on the one side, and plum trees on the other. Mr. Newton said trees lose their leaves, and he felt it was too much of a request. Mrs Feller said would you rule on a lesser setback. Would 130 feet be acceptable? Ron Newton said he would be willing to go 125 feet. We give a plus or minus of 5 feet to give you a little bit of leeway. Henry Becker said that the owners of the house to the east, the owners told them they are planning on giving their daughter a piece of land so she can build out back at 300 to 350 feet. Mr. Skaine said they will not get that setback.

ACTION:

Motion by Ronald Newton, seconded by John Gatti that Appeal No X be amended to read one hundred twenty five foot (125') instead of the one hundred fifty feet (150') that was requested.

ALL VOTING AYE. MOTION CARRIED.

Meeting adjourned at 8:30 p.m.  
John P. Brady, Chairman